IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1197 OF 2005

Shivaji Shripati Jadhav ... Appellant

V/s

Bhikaji Narayan Jadhav & anr. ... Respondent

Mr. P.D. Dalvi for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 27TH SEPT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur, dated 27.6.2005 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Kolhapur, dated 12.6.2003 dismissing the plaintiff's suit for declaration and injunction.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiffs filed the suit praying for declaration that they are the owner of the suit property

1-A as mentioned in the plaint and also claimed declaration that they have got easementary right of passing of waste water through the property 1-B as mentioned in the plaint. The plaintiffs claimed for injunction against the defendant from causing obstruction to the possession of the plaintiffs over the property as mentioned in para 1-A of the plaint. The property mentioned in para 1-A of the plaint is an open space admeasuring 8" x 10" out of Grampanchayat property No. 180 situated at village Jatharwadi. Further, the property mentioned in para 1-B of the plaint is a passage of 1 1/2" in width towards the south-east of property as mentioned in para 1-A of the plaint. Property 1-B is the open space in between the property of defendant and one Pundlik Chodke. Both these properties are in "Z" shape and are suit properties. The plaintiffs claim right of ownership as well as right of easement towards suit property. Hence the suit.

The defendant contested the suit inter-alia denying the allegations of the plaintiffs submitting that the plaintiffs had no right over the suit property and, as such, the suit was sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on

merits and came to the conclusion that the plaintiffs failed to prove that they were owner in possession of the suit property. Further, plaintiffs failed to prove their easementary right of flow of waste water of the plaintiffs from the property mentioned in para 1-B and, as such, the suit for declaration and possession as well as injunction, came to be dismissed.

The appeal was carried to the District Court at Kolhapur. The learned Addl. District Judge, after hearing both parties on the basis of available evidence came to the conclusion that the learned Trial Judge has adjudicated the dispute on merits in proper manner and dismissed the appeal. Hence the present appeal

5. At the outset, it may be noted that there is no substantial question of law involved. It can be seen from the record that the dispute revolves around two documents of sale deed. Sale deed Exh.46 is of 19.10.1911, whereas the sale deed Exh.28 is dated 2.10.1936 executed by the defendant. Both the Courts below have taken into accounts the contents of both sale deeds and have come to the conclusion that the claim of the plaintiffs is not proved on the basis of sale deed Exh.46 as it was not sufficiently clear to establish the

boundaries of the property purchased by the plaintiffs under the said sale deed Exh.46. There was no other evidence on record to show that the suit property is owned by the plaintiffs and they have easementary right over the remaining property, namely, the property 1-B and, as such, the concurrent findings recorded by both the Courts below are seen to be arrived at after proper appreciation of the entire evidence on record. The learned counsel for the appellant sought to urge that the question of interpretation of the said document was the question of law. However, perusal of judgments of both the Courts below would show that the issue involved was the issue of fact which cannot be considered as issue of law, leave aside substantial question of law.

6. Under the circumstances, I see no merits in the appeal. In the result, the appeal stands dismissed with no order as to costs.

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